

1. City Council Regular Meeting Agenda

Documents:

[07-14-14 SPECIAL MEETING AGENDA.PDF](#)

2. City Council Regular Meeting Packet

Documents:

[07-14014 COUNCIL PACKET3.PDF](#)



**CITY OF YPSILANTI
SPECIAL COUNCIL MEETING AGENDA
CITY COUNCIL CHAMBERS – ONE SOUTH HURON ST.
YPSILANTI, MI 48197**

**MONDAY, JULY 14, 2014
7:30 A.M.**

I. CALL TO ORDER –

II. ROLL CALL –

Council Member Jefferson	P A	Council Member Robb	P A
Council Member Moeller	P A	Council Member Vogt	P A
Council Member Murdock	P A	Mayor Schreiber	P A
Mayor Pro-Tem Richardson	P A		

III. INVOCATION –

IV. PLEDGE OF ALLEGIANCE –

"I pledge allegiance to the flag, of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all."

V. INTRODUCTIONS –

VI. AUDIENCE PARTICIPATION-

VII. REMARKS BY THE MAYOR –

IX. RESOLUTIONS/MOTIONS/DISCUSSIONS

Resolution 2014-155, approving purchase agreement with Washtenaw County Parks and Recreation (WCPARC) to purchase 4.1 acres for the Eastern Washtenaw Recreation Center.

X. AUDIENCE PARTICIPATION -

XI. REMARKS BY THE MAYOR –

XI. ADJOURNMENT –

Resolution No. 2013-171, adjourning the Special Council Meeting.



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REQUEST FOR LEGISLATION
July 14, 2014

From: Ralph A. Lange, City Manager
Teresa Gillotti, Director of Community and Economic Development

Subject: Purchase agreement with Washtenaw County Parks and Recreation (WCPARC) to purchase 4.1 acres for the East-Side Recreation Center

Update:

July 8, 2014, Ypsilanti City Council approved a purchase agreement with Washtenaw County Parks and Recreation Commission (WCPARC) for 4.1 acres for an East Side Recreation facility. The approval did have conditions, primarily to address the change in direction WCPARC requested, which would not have them go through any City zoning, building or HDC review of the project, due to their status as county government with immunity from local regulations.

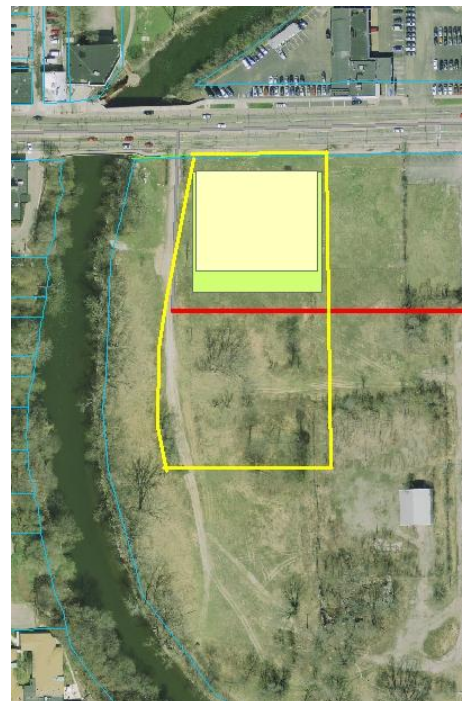
A last minute change to the July 8 agreement required that the building be built north of the center line of the Parson Street right of way – assuming Parson Street was extended to the Huron River. This preserves the grid structure of Water Street, per the Shape Ypsi master planning process, and helps to coordinate adjacent development.

After the meeting City staff made a formal request for 3 binding changes to the contract that would ensure the establishment of a street wall along Michigan Avenue. This would set the location of the Rec Center on the site, ensure visibility inside and out of the building, and would set the tone for locating future buildings along the Michigan Avenue frontage.

WCPARC agree to the intent, but only agreed to one new contractually binding element –a minimum building size of 35,000 square feet. This would require that the building massing be fairly substantial, forcing it closer to Michigan Avenue. Note that the current concept plans show a 45,000 sf building.

The picture at the right shows the approximate size of the 4.1 acre parcel in the yellow outline. The red line shows the parsons ROW line. The yellow rectangle a 35,000 sf building and the light green a 45,000 sf building.

Staff feels that these two conditions provide definition to where the Rec Center will be located, and will provide some assurance to other developers to know what development to expect on the site.



Based on these two elements, staff is recommending approval of the of the attached purchase agreement and looks forward to working with WCPARC and the community on the project.

Recommendation: Approval

ATTACHMENTS:

- Purchase Agreement
- Resolution

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



REVISED
Resolution No. 2014- 155
July 14, 2014

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

WHEREAS, The Ypsilanti City Council approved a Letter of Intent for the sale 4.1 acres at its regularly-scheduled January 10, 2012 and provided an extension to the letter of intent at its July 16, 2013 meeting; and

WHEREAS, Ypsilanti City staff have worked with Washtenaw County Parks and Recreation Commission (WCPARC) on concept plans and related purchase agreement for the acquisition of a 4.1 acre parcel on the Northwest portion of the Water Street Redevelopment Area; and

WHEREAS; Ypsilanti City Council approved an ordinance to sell Water Street on August 18, 2009; and

WHEREAS, Ypsilanti City Council passed a resolution requiring a public hearing with every purchase offer for the Water Street Redevelopment Area in July 21, 2009; and

WHEREAS; Ypsilanti City Council has held a public hearing for the sale of a 4.1 acre portion of the Water Street Redevelopment area to provide an opportunity for public input on July 8, 2014; and

WHEREAS; WCPARC intends to build an approximately 45,000 square foot East Side Recreation Center to be operated by the Ann Arbor YMCA; and

WHEREAS: WCPARC has negotiated terms including, due diligence, governmental approval periods, as well as purchase price, and development of related infrastructure; and

WHEREAS the City is the developer of the Water Street Redevelopment area where WCPARC is not subject to local zoning, Historic District ordinance or local building code due to its status as a county entity;

NOW, THEREFORE, BE IT RESOLVED THAT the Ypsilanti City Council approve the attached Purchase Agreement with Washtenaw County Parks and Recreation Commission to sell and develop 4.1 acres of the Water Street Redevelopment Area as presented in the agreement and attachments, and

FURTHER, that the Mayor and City Clerk are authorized to sign the Purchase Agreement

OFFERED BY: _____

SUPPORTED BY: _____

YES:

NO:

ABSENT:

VOTE:

AGREEMENT TO PURCHASE REAL ESTATE

THIS AGREEMENT TO PURCHASE REAL ESTATE ("Agreement") is entered into by and between, **CITY OF YPSILANTI**, a Michigan municipal corporation, the address of which is One South Huron Street, Ypsilanti, Michigan 48197 ("City"), and **WASHTENAW COUNTY**, a Michigan municipal corporation, the address of which is 220 N. Main, Ann Arbor, MI 48104 ("Purchaser").

R E C I T A L S:

A. City is the owner of certain real property located in City of Ypsilanti, Washtenaw County, Michigan, which is more particularly depicted on Exhibit A attached hereto and made a part hereof consisting of approximately 4.1 acres of vacant land ("Property").

B. The Property is part of an overall project known as the Water Street Redevelopment Project ("Water Street Project") located within the real property which is identified on Exhibit B attached hereto ("Overall Property").

C. City desires to sell and Purchaser desires to purchase the Property, upon the terms and conditions described below.

D. Purchaser has proposed to construct on the northwest corner of the Property an approximately 45,000 square foot recreational facility preliminarily described on Exhibit C-1 (described both as "Facility" and "Project") for use by residents of Washtenaw County and in connection to (i) design and construct, at its sole cost, certain offsite roads, utility connections and other offsite infrastructure improvements on the Overall Property (the "Offsite Infrastructure Improvements"), all as depicted and described on the attached Exhibit C-2 and pursuant to the terms hereof and (ii) fully perform its prior undertakings with City as set forth in a Parks Contribution Agreement being negotiated by the parties relative to the Purchaser's commitment to partially funding the design and construction by City of a linear park along the water's edge of the Overall Property for use by the public (the "Linear Park").

THEREFORE, in consideration of the mutual covenants and the undertakings described in this Agreement, the parties agree as follows:

1. **Agreement of Purchase and Sale.** City agrees to sell to Purchaser, and Purchaser agrees to purchase, the Property, subject to and in accordance with the terms and conditions of this Agreement.

2. **Purchase Price.** The purchase price ("Purchase Price") for the Property shall be One Dollar (\$1.00). At Closing, as defined in Paragraph 9 below, Purchaser shall pay to City the Purchase Price, subject to closing adjustments and prorations as provided in this Agreement and commit to construct the Facility and construct the Infrastructure Improvements, all as hereinafter provided.

3. **Title; Survey; Final Legal Description.**

(a) Within fifteen (15) days from the finalization of the New Survey for the Property pursuant to Section 3(b), City shall, at its cost, cause Absolute Title, Inc. to deliver to Purchaser a commitment for an ALTA Owner's Title Insurance Policy ("Commitment") in an amount equal to Five Hundred Thousand (\$500,000.00) Dollars, bearing a date later than the Effective Date, and identifying the condition of title to the Property, together with copies of the instruments and documents referenced in the Commitment.

(b) Within fifteen (15) days from the Effective Date, City shall furnish to Purchaser copies of surveys (if any) which City has regarding the Property and the Overall Property a/k/a Water Street Project. Purchaser shall obtain a survey of the Property and provide to City a copy of such survey within forty-five (45) days from the Effective Date (the "New Survey"). Said New Survey shall be certified to Purchaser, the City and the Title Company. City shall advise Purchaser in writing of its approval of the legal description for the Property reflected in the New Survey within fifteen (15) days of receipt of the New Survey, such approval not to be unreasonably withheld. Upon the City's approval or deemed approval of the legal description for the Property, same shall be made a part hereof.

4. Objections to Title And Survey.

(a) **Objections to Title.** Purchaser shall have a period of twenty (20) days from receipt of the title insurance commitment to object in writing to the condition of title to the Property. If Purchaser does not object within said time period, Purchaser shall be deemed to have waived all objections to the condition of title to the Property. If Purchaser serves City with any written objections, City shall have thirty (30) days to cure such objections. City shall be deemed to have cured a title objection if City causes such matter to be removed from the Commitment as an exception to coverage or title company agrees to insure Purchaser for such matter. If City does not cure Purchaser's objections as provided above, Purchaser shall have the right to terminate this Agreement by providing written notice to City within ten (10) days from the expiration of the foregoing thirty (30) day period. If Purchaser terminates this Agreement in accordance with this Paragraph 4, the parties shall have no further rights or obligations under this Agreement.

(b) **Objections to Survey.** Purchaser shall have a period of fifteen (15) days from receipt of the updated ALTA survey to object to any defects or other conditions which are revealed in the survey of the Property. If Purchaser does not object within said time period, Purchaser shall be deemed to have waived all objections to the survey of the Property. If Purchaser does object to defects or other conditions that are objectionable to Purchaser in the survey then Purchaser shall serve City with such written objections and City shall have thirty (30) days to cure such objections. If City does not cure Purchaser's objections as provided above, Purchaser shall have the right to terminate this Agreement by providing written notice to City within ten (10) days from the expiration of the foregoing thirty (30) day period. If Purchaser terminates this Agreement in accordance with this Paragraph 4, the parties shall have no further rights or obligations under this Agreement.

5. Due Diligence.

(a) **Information Access.** Within fifteen (15) days of the Effective Date, City shall provide Purchaser with any existing information in its possession, custody, and/or control regarding the Property and the areas in which Offsite Infrastructure Improvements are to be constructed by Purchaser in accordance with Exhibit C-2. Such information may be provided on computer disk. City does not make any representation or warranty regarding any such information, including, without limitation, any representation or warranty with respect to the completeness or accuracy of any such information. However, City is unaware that any of the information provided to Purchaser as described herein is incorrect or faulty in any material manner. Purchaser shall have the right to inspect additional information regarding the Property which is located within City offices at a mutually acceptable time and if required by City with appropriate supervision by City staff. At all times during the term of this Agreement and subject to the provisions of 5(b) below, City grants to Purchaser, and those persons designated by Purchaser, the right to enter upon the Property in order to inspect the Property and to take soil borings and conduct engineering and environmental tests and studies. Purchaser shall provide to City, at no cost to City, copies of all due diligence materials prepared by or on behalf of Purchaser in connection with this

transaction promptly following Purchaser's receipt of such due diligence materials, regardless of whether the transaction closes.

(b) **Purchaser Due Diligence.** Purchaser shall engage in additional due diligence for a period of up to two hundred seventy (270) days from the Effective Date ("Due Diligence Period") to investigate and determine its ability to construct a recreation center on the Property including but not limited to the solicitation of possible operators, a review of soil conditions and other design factors related to construction of the Facility, availability of funding (which may include bonds or millages), anticipated costs of construction and operation of the Facility, preliminary bid planning, and such other due diligence as necessary for Purchaser to determine whether or not Purchaser should proceed with the Project. During such period, Purchaser will expend funds for consultants, advisors, engineers, and other professional services in order to confirm the viability of the project. The undersigned parties acknowledge and agree that Purchaser will not actually operate the Facility which it constructs but rather intends to enter into an operations agreement with the YMCA which has considerable experience in the operation of urban recreation and exercise facilities. The ability to obtain a commitment from the YMCA or such other suitable operator as Purchaser deems satisfactory in conjunction with the operation of the Facility prior to the expiration of the Due Diligence Period is a key condition in the success of this Project. Although the Purchaser is exempt from local zoning ordinances, it intends to adhere to local standards to the extent possible and that ordinances involving building height, setbacks, and parking in the rear will be considered when creating its final plan. Purchaser has attached a Concept Drawing to this Agreement as Exhibit C-1.

(c) **Restoration; Insurance.** Purchaser shall use all reasonable efforts to minimize any damage to the Property and, in the event any portion of the Property is disturbed or altered by virtue of Purchaser's investigations, Purchaser shall promptly, at its sole cost and expense, restore the Property to substantially the same or better condition that existed prior to such disturbance or alteration. Purchaser shall be responsible for any and all claims, liabilities, suits, costs, expenses and damages, including reasonable attorneys' fees, arising out of the inspection activities of Purchaser or its agents, employees or contractors, and/or any construction liens filed by any of Purchaser's contractors, subcontractors or suppliers in connection with any such inspection activities. Prior to entering the Property, Purchaser shall provide City with evidence of liability insurance in the amount of Two Million and 00/100 (\$2,000,000.00) Dollars, which names City as an additional insured party and provides coverage for all of Purchaser's activities within the Property and which insurance coverage cannot be cancelled or the amount of coverage reduced prior to Closing. Purchaser's obligations under this Section 5(c) shall survive the termination of this Agreement.

(d) **Expiration of the Due Diligence Period.** If Purchaser, in its reasonable judgment, determines that the condition of the Property is unsatisfactory, Purchaser may, prior to the expiration of the Inspection Period, elect in writing to terminate this Agreement. If Purchaser elects to terminate this Agreement, the parties shall have no further rights or obligations under this Agreement, except for Purchaser's obligations as described in the Linear Park Contribution Agreement, which shall survive as described in paragraph 11(f) and as provided in Section 5(c) above.

(e) **Environmental Mitigation.** In the event Purchaser is advised that the Property requires any environmental mitigation from either state or federal regulatory agencies in order for Purchaser to use the Property as intended, Purchaser shall immediately notify City prior to the expiration of the Due Diligence Period of that condition and the mitigation that is required. For purposes of this paragraph, mitigation shall mean any and all activities necessary to allow the uses contemplated for the Property under the terms of this Agreement to Purchase Real Estate to proceed and be approved by all federal, state and local regulatory agencies having jurisdiction over environmental conditions and hazardous materials without additional cost to Purchaser. If Purchaser determines that costs or expenses

are necessary to properly mitigate the Property for the contemplated uses and that it does not wish to proceed with this transaction due to those costs and expenses, Purchaser may immediately serve written notice to City that it no longer has any interest in acquiring the Property in which case both parties shall have no further obligation to the other in conjunction with this Agreement except for those obligations that survive.

(f) **Governmental Approval.** Purchaser shall have a period of two hundred seventy (270) days from the Effective Date (“Governmental Approval Period”) to seek and obtain all governmental permits and approvals that are required with regard to Purchaser’s Offsite Infrastructure Improvements and all such other permits and approvals as are necessary to commence and complete development of the Property (“Governmental Approvals”) including but not limited to final approval by the Washtenaw County Board of Commissioners and the Washtenaw County Parks and Recreation Commission as needed upon terms and conditions acceptable to Purchaser in its sole discretion. Purchaser shall be responsible at its sole cost and expense for the preparation of all applications and related plans and instruments and all applicable filing, submission and permit fees related to the Governmental Approvals as defined herein. Purchaser shall provide to City periodic updates with respect to the status of Governmental Approvals. Purchaser shall have the right to extend the Governmental Approval Period for four (4) extension periods of sixty (60) days each by providing written notice to the City of such election. Such notice to be received by the City prior to the expiration of the then applicable Governmental Approval Period.

(g) **Expiration of Governmental Approval Period.** If Purchaser does not obtain the Governmental Approvals prior to the expiration of the Governmental Approval Period, Purchaser may elect in writing to terminate this Agreement by providing written notice to City prior to the expiration of the Governmental Approval Period. If Purchaser elects to terminate this Agreement, the parties shall have no further rights or obligations under this Agreement except for Purchaser’s obligations which shall survive.

(h) **Easements.** No later than sixty (60) days following City’s receipt of Purchaser’s construction drawings, which Purchaser shall provide the City no later than 90 days prior to the expiration of the Governmental Approval Period, City shall identify and describe any and all easements which it will require from Purchaser at Closing (“Easements”). All such Easements will include drawings showing their location and provide detailed descriptions regarding their size and purpose.

(i) **Termination of Project.** In the event Purchaser determines at any time during the Due Diligence Period or Governmental Approval Period that the Project is not viable or that it does not intend to proceed with the Project for any reason or no reason at all, then the Purchaser shall send written notice to City of its intent to terminate its participation in the Project (“Notice of Termination”). In the event the Project is terminated, Purchaser’s obligations with regard to Offsite Infrastructure Improvements shall also be terminated provided that any expenditures or work already performed by Purchaser is not subject to repayment or reimbursement by City.

(j) **Obligation to Proceed.** In the event Purchaser does not deliver to City a Notice of Termination for any of the reasons set forth in this Paragraph 5, then Purchaser shall be deemed to have committed to proceed with the construction as described in Paragraph 11(b) and a closing shall be scheduled as required by Paragraph 8. While the Purchaser’s decision to proceed with the Project is not related to the Washtenaw County Parks & Recreation Commission request for millage renewal which will be on the ballot in November of 2014 (“Millage Renewal”), defeat of that request would significantly impact the Parks & Recreation budget and its ability to carry out the implementation of the Facility described in this Agreement. To that extent, City can terminate any further obligations under this Agreement if the Millage Renewal does not pass. City’s right to terminate this Agreement must be

exercised by sending a Notice of Termination to Purchaser no later than December 10, 2014. If the Notice of Termination has not been delivered to Purchaser by that date, then City's ability to terminate this Agreement for the reasons set forth herein shall expire.

(k) **City Termination Rights.** Purchaser shall provide to the City prior to the expiration of the Governmental Approval Period evidence that Purchaser has obtained all Governmental Approvals necessary for Purchaser's ability to construct the Project including, but not limited to, all DEQ, MDOT and/or County building and soil erosion permits and all approvals from the Washtenaw County Board of Commissioners and the Washtenaw County Parks and Recreation Commission, which approvals shall commit such funds as are necessary to construct the Project. In the event Purchaser fails to provide evidence that it has obtained all necessary Governmental Approvals on or prior to the expiration of the Governmental Approval Period then, in that event, the City shall have the right to elect to terminate this Agreement by providing written notice of such election to Purchaser within ten (10) business days following the expiration of the Governmental Approval Period. Purchaser agrees to provide copies of all such Governmental Approvals together with such other evidence as Seller may reasonably require in connection therewith. In the event Seller elects to terminate this Agreement as a result of the Purchaser's failure to have obtained all requisite Governmental Approvals then, in that event, this Agreement shall terminate as of the date stated in the City's notice and each party shall thereafter be released of any and all obligations under this Agreement except those that expressly survive the termination hereof.

6. **Restrictive Covenant Agreement.** At Closing, City and Purchaser shall execute and record a restrictive covenant agreement ("Restrictive Covenant Agreement") that restricts any portion of the Overall Property from being utilized as a public or private fitness or health center, exercise facility, or recreation center for a period of ten (10) years commencing January 1, 2018 ("Exclusive Uses") provided that such restrictions shall not apply to fitness facilities that are less than 1,500 square feet in size or are appurtenant to residential communities and limited to the use of the residents within that community. The Restrictive Covenant Agreement shall provide that City shall have the right to record additional restrictive covenants against the Property which restrict the Property from being utilized for certain uses for which City has granted other purchasers of land within the Water Street Project exclusive rights in connection with the initial sale of land by City to such purchasers, provided that any such restrictions shall not restrict the Property from being utilized for county recreation facility. The Restrictive Covenant Agreement shall contain such additional terms and conditions as the parties may agree.

7. **Infrastructure; Special Assessment District.** Purchaser acknowledges that the Property may be subject to one or more special assessment districts for the cost of any Infrastructure Improvements which City may elect to install on the Overall Property in the future and Purchaser and its successors shall fully cooperate in the creation of same provided that Purchaser shall not be subject to any special assessment districts which do not directly benefit the Property. Special assessment districts which would benefit the Property include the reconstruction or installation of water and sewer lines, and roads. At Closing, Purchaser shall execute and deliver to City such additional agreements as City may require to evidence the Purchaser's agreement to install at its sole cost the Offsite Infrastructure Improvements described on the attached Exhibit C-2 pursuant to plans and specifications prepared by Purchaser at Purchaser's sole cost. The Offsite Infrastructure Improvements shall include all offsite roads, utilities, curbs, sidewalks and streetscapes depicted on Exhibit C-2.

8. **Closing.** The closing ("Closing") shall be consummated within thirty (30) days after Purchaser has either removed or waived the above contingencies. The Closing shall take place at a time and location that is mutually agreeable to the parties. If the date for Closing falls on a Saturday, Sunday or legal holiday, Closing shall occur on the next immediately following business day.

9. **Closing Documents and Actions.** At Closing, City shall execute and deliver to Purchaser (as required) and Purchaser shall execute and deliver to City (as required) the following:

(a) **Payment of Purchase Price.** Purchaser shall deliver to City the Purchase Price subject to applicable adjustments and prorations as provided for in this Agreement.

(b) **Covenant Deed.** City shall deliver to Purchaser a fully executed and recordable covenant deed for the Property, conveying to Purchaser fee simple marketable title to the Property, subject only to the Permitted Exceptions and the easements identified in Paragraph 9(f) below and the Restrictive Covenant referenced in Section 6 above.

(c) **Non-Foreign Person Affidavit.** City shall furnish Purchaser with an affidavit stating that City is not a "Foreign Person" within the meaning of IRC Section 1445(f)(3), as amended.

(d) **Closing Statement.** City and Purchaser shall execute and deliver to each other a Closing Statement showing the amount by which the Purchase Price shall be adjusted as of the Closing date. City shall pay all real property transfer taxes, all premiums with respect to the owner's title insurance policy, fees to record any instruments necessary to cure Purchaser's title objections and the parties shall pay the fees and charges of their own representatives, agents or contractors. City shall pay the fees to record the easements identified in Paragraph 9(f) below and the Restrictive Covenant and all escrow and other fees charged by the Title Company to close this transaction. There shall be no prorating real property taxes at Closing.

(e) **Title Insurance Policy.** City shall order and pay for a policy of title insurance, without standard exceptions (provided that Purchaser provides the survey required by the Title Company to remove the standard survey exception), with coverage in an amount equal to the amount stated in Section 3 above, subject only to the Permitted Exceptions and the easements identified in Paragraph 5(h) and the Restrictive Covenant. The Purchaser shall be responsible for obtaining any endorsements to such title policy desired by Purchaser, at Purchaser's cost. City shall deliver to the Title Company an Owners Affidavit and such other documents reasonably required by the Title Company to enable the Title Company to satisfy its Schedule B-1 requirements and to delete its standard exceptions (excluding any surveys) and to provide a "marked-up" Commitment, dated as of the Closing date. The "marked-up" Commitment shall reflect Purchaser as both fee simple title owner of the Property and the insured under said Commitment.

(f) **Easements.** Purchaser shall execute and deliver to City all easements and agreements required pursuant to Paragraph 5(h).

(g) **Restrictive Covenant.** City and Purchaser shall execute and record the Restrictive Covenant as described in Paragraph 6.

(h) **Further Assurances.** City and Purchaser shall execute such additional documents and instruments and take such further actions as may be necessary or desirable to consummate the sale of the Property in accordance with the terms of this Agreement.

10. **Possession; As-Is Condition.** At Closing, City shall deliver to Purchaser possession of the Property, free and clear of any rights or claims of possession by City or any third party. Purchaser acknowledges that City has not made and Purchaser has not relied on any representation or warranty by City, including, without limitation, any representation or warranty regarding the physical or environmental condition of the Property, the fitness of the Property for any particular purposes or the availability of any permits or approvals. Purchaser acknowledges that Purchaser has relied completely on

its own investigations and other due diligence activities to evaluate the condition of the Property and the availability of permits and approvals and that, at Closing, Purchaser will be accepting the Property in its then-current as-is, where-is condition, with all faults.

11. **Post-Closing Obligations.** The following obligations are intended to and shall survive the Closing. At either party's election, the parties shall execute and/or record as appropriate at Closing such reaffirmations and other agreements necessary to assure that such obligations shall survive closing and to the extent appropriate or required to bind the Property.

(a) **Site Design and Public Feedback.** With regard to onsite improvements including the Project and Facility, Purchaser will schedule at least two (2) public meetings with the Ypsilanti Planning Commission and/or Ypsilanti City Council at critical Project milestones to receive feedback regarding design issues which Purchaser agrees to consider, including but not limited to (i) the use of glass or glazing over at least sixty percent (60%) of the first floor of the Facility facing Michigan Avenue, (ii) the Facility shall not be constructed less than ten (10) feet from the Michigan Avenue right-of way or any environmental condition that may exist, and -(iii) the Water Street Zoning Guidelines or any approved zoning for the Overall Property including but not limited to a minimum size of not less than 35,000 square feet, the use of glass or glazing over at least sixty percent (60%) of the first floor of the Facility facing Michigan Avenue, and the Facility shall not be constructed less than ten (10) feet from the Michigan Avenue right-of way or any environmental condition that may exist—(the “Guidelines”). Purchaser may consider a shared parking arrangement or changes in parking location if an opportunity arises to configure parking in conjunction with an adjacent development. Purchaser reserves the right to modify any of the above-described ~~elements-Guidelines~~ if, in its sole discretion, it determines that such modifications are necessary due to cost, design considerations, or functionality of the Facility. Notwithstanding the foregoing, Purchaser agrees that the ~~recreational building-Facility~~ to be constructed by Purchaser as part of Project shall be at least 35,000 square feet in size and placed such that the entire structure is located north of the center line of the Parson Street right of way assuming Parson Street was extended to the Huron River. Although Purchaser is not subject to City building and zoning restrictions, any relocation of said building south of the Parson Street center line so described shall require the approval of the City. Upon Purchaser's finalization of its plans and/or construction drawings, or if the plans and drawings for the Project are modified, Purchaser shall provide a copy to City.

(b) **Covenant to Construct, Open and Operate; Re-Purchase Option.** Purchaser shall commit at Closing to construct the Facility and the Purchaser Infrastructure Improvements in accordance with the Preliminary Project Schedule attached to this document as Exhibit D. It is understood that this is a Preliminary Project Schedule subject to modification and changes due to subsequent occurrences and conditions within and outside Purchaser's control. It is provided for the purpose of demonstrating the various times that this Project could take. The Purchaser Offsite Infrastructure Improvements must be built in accordance with the plans that have been approved by City and all streets will be built to City standards which include street trees, sidewalks, and inclusion of on-street parking. The proposed parcel layout is intended to support the grid layout of the Master Plan with the exception of Parsons Street, which would provide pedestrian access only and not a fully functioning street. Purchaser's obligation to construct the Offsite Infrastructure Improvements is conditioned upon Purchaser proceeding with construction of the Facility. Purchaser shall commence construction of such Offsite Infrastructure Improvements within one (1) year from the Closing date and shall complete such Offsite Infrastructure Improvements no later than December 30, 2017 provided that the completion date may be extended for any reasonable time which results from conditions or events which are outside of Purchaser's control, but in no event for more than ninety (90) days. For purposes of the foregoing, commencement of construction shall mean that Purchaser has obtained all permits and approvals necessary for the construction of such Offsite Infrastructure Improvements and that all necessary utility improvements have been installed and excavation has commenced. Construction of the Facility shall proceed in a reasonable

manner and shall begin operation within thirty (30) days after the Facility is completed and fully equipped but no later than January 1, 2018. Purchaser and its partners and designees agree that it shall commit to operating the Facility for a period of ten (10) years commencing January 1, 2018 and continuing thereafter. To that extent, Purchaser agrees to include a deed restriction which limits the use of the Property to a recreation center for a period of ten (10) years (the "Use Restriction Period").

(c) **Repurchase Option.** In the event that Purchaser does not construct its Facility on the Property or commence the operation of a recreation facility from the Property as provided in Paragraph 11(b) above, or, if following commencement of operation of Purchaser's business from the Property, the Property ceases to be used for a recreation center for a period of ten (10) years, City may serve Purchaser with a sixty (60) day written Notice to Cure Default and shall have the option to purchase the Property from Purchaser if Purchaser fails to cure the default. This option shall expire at the end of the Use Restriction Period. The purchase price shall be the fair market value of all physical improvements constructed on the Property including the Facility, landscaping, parking areas, and other improvements as well as all Offsite Infrastructure Improvements constructed by Purchaser. The purchase price shall not include soft costs such as engineering, architectural design, environmental consultants, or be influenced by any unpaid bond obligations which Purchaser may have in conjunction with the Property. If during the Use Restriction Period, Purchaser cures the obligation contained in the above-described Notice, then City's option to purchase shall be extinguished unless similar events occur during said Use Restriction Period at which time another Notice to Cure Default may be sent. At the closing for any such repurchase of the Property by City, Purchaser shall be responsible for the payment of all transfer taxes payable in connection with such transaction subject to any encumbrances, obligations, or other title exceptions which may at that time exist with regard to the Property.

(d) **Partial Construction.** In the event Purchaser begins construction on the Facility and for any reason ceases to continue that construction for a period of ninety (90) days, then City shall have the right to repurchase the Property including any improvements thereon after giving Purchaser written notice of default sixty (60) days prior. In the event Purchaser does not cure said default within said sixty (60) day period, City shall have the right to repurchase the Property for the fair market value of the improvements already constructed and shall have no further obligation beyond that amount.

(e) **Determination of Fair Market Value.** For purposes of these provisions, fair market value of the improvements constructed by Purchaser shall be determined by binding arbitration between the undersigned parties. If the parties cannot agree on the fair market value of the improvements, either party may serve a notice on the other of the need to arbitrate that issue. In such event, each party shall choose a duly licensed commercial real estate appraiser within ten (10) days and those two appraisers shall choose a third appraiser within an additional ten (10) days. Within thirty (30) days thereafter, the three appraisers shall meet, review all of the information available, visit the site, and issue an opinion as to the value of the Property and improvements thereon (and the value of offsite infrastructure improvements constructed by Purchaser), and issue a finding which finding shall be binding upon both parties. The finding must be supported by a majority of the appraisers and does not require unanimity.

(f) **Linear Park.** Purchaser shall fully perform its prior undertakings with City as set forth in the Parks Contribution Agreement relative to partially funding the design and construction by City of a linear park along the water's edge of the Overall Property for use by the public. City shall be responsible for maintaining the Linear Park except for easement areas granted to Purchaser for use and maintenance of storm water facilities and shared plaza space if constructed.

(g) **Restrictions on Sale.** Purchaser agrees that it shall not sell or convey title to the Property to any other person or entity (other than the City) prior to construction of the Facility without the City' prior written consent, which restriction shall be referenced in the Deed.

12. **Condemnation.** In the event that, prior to Closing, notice of any action, suit or proceeding shall be given for the purpose of condemning all or any portion of the Property, then Purchaser shall have the right to terminate its obligations under this Agreement within ten (10) days from its receipt of such notice of condemnation proceeding, and upon such termination, the proceeds resulting from the condemnation shall be paid to City, and the Deposit shall promptly be returned to Purchaser and the parties shall have no further rights or obligations under this Agreement, except for Purchaser's indemnity obligations, which shall survive. In the event Purchaser elects not to terminate this Agreement, at Closing, the condemnation proceeds shall be assigned and belong to Purchaser.

13. **Default.** In the event that Purchaser defaults in its obligations under this Agreement, the City shall be entitled to all remedies available at law, in equity or under this Agreement. In the event that the City defaults in its obligations under this Agreement, Purchaser may, as its sole remedy, at its option: (a) seek reimbursement for all costs incurred in conjunction with its performance under this Agreement not to exceed \$50,000.00; or (b) specifically enforce the terms and conditions of this Agreement, provided that Purchaser has fully performed all of its obligations under this Agreement. Purchaser shall not have the right to seek monetary damages from the City. The City shall not have the right to seek monetary damages from the Purchaser.

14. **Purchaser's Representations, Warranties And Covenants.** Purchaser represents, warrants and covenants to City as follows:

(a) **Due Organization.** Purchaser is a Michigan Municipal Corporation duly organized under the laws of the State of Michigan and has the power to enter into this Agreement and purchase the Property.

(b) **Power And Capacity.** Purchaser has the full power, capacity, authority and legal right to execute and deliver this Agreement and to perform its obligations under this Agreement.

(c) **Due Authorization.** This Agreement has been duly authorized, executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms. Prior to or at Closing, any and all documents required by this Agreement to be executed and delivered by Purchaser shall have been duly authorized, executed and delivered by Purchaser and all such documents shall contain legal, valid and binding obligations of Purchaser, enforceable in accordance with their terms.

15. **No Joint Venture.** No party is the agent, partner or joint venture partner of the other. No party has any obligation to the other except as specified in this Agreement.

16. **Non-Waiver.** The failure of a party to complain of any act or omission on the part of another party, no matter how long it may continue, shall not be deemed to be a waiver by any party to any of its rights hereunder except as expressly provided for in this Agreement. No waiver by any party at any time, expressed or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision. If any action by any party shall require the consent or approval of another party, the consent or approval of the action on any one occasion shall not be deemed a consent to or approval of that action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.

17. **Third Party Rights.** No party other than City and Purchaser and their successors and assigns, shall have any right to enforce or rely upon this Agreement, which is binding upon and made solely for the benefit of City and Purchaser, and their respective successors or assigns, and not for the benefit of any other party.

18. **Time.** TIME IS OF THE ESSENCE OF AND ALL UNDERTAKINGS AND AGREEMENTS OF THE PARTIES HERETO.

19. **Notices.** Any notice to be given or served upon any party to this Agreement must be in writing and shall be deemed to have been given: (a) upon receipt in the event of personal service by actual delivery (including by telecopy or delivery service); (b) the first business day after posting if deposited in the United States mail with proper postage and dispatched by certified mail, return receipt requested; or (c) upon receipt if notice is given other than by personal service or by certified mail. All notices shall be given to the parties at the following addresses:

If To City: City of Ypsilanti
One South Huron Street
Ypsilanti, Michigan 48197
Attn: Ralph Lange
Fax No: (734) 483-7260

With A Copy To: Joseph M. Fazio, Esq.
Miller, Canfield, Paddock and Stone, P.L.C.
101 N. Main Street, 7th Floor
Ann Arbor, Michigan 48104
Fax No: (734) 747-7147

If To Purchaser: Washtenaw County Parks & Recreation Commission
P.O. Box 8645
Ann Arbor, MI 48107-8645
Attn: Robert Tetens
Fax No.: (734) 971-6386

With A Copy To: Curtis Hedger
Office of Corporation Counsel
PO Box 8645
Ann Arbor, MI, 48107-8645

Any party to this Agreement may at any time change the address for notices to that party by giving notice in this manner.

20. **Days.** Whenever this Agreement requires that something be done within a specified period of days, that period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at 5:00 p.m. local time on the day upon which the period expires, and (d) unless otherwise specified in this Agreement, be construed to mean calendar days; provided, that if the final day of the period falls on a Saturday, Sunday or legal holiday, the period shall extend to the first business day thereafter.

21. **Severability.** If one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be

construed as if the invalid, illegal or unenforceable provision had never been contained within the body of this Agreement.

22. **Entire Agreement.** This Agreement embodies the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded by and merged into this Agreement. Neither this Agreement nor any of its provisions may be waived, modified or amended except by an instrument in writing signed by the party against which enforcement is sought, and then only to the extent set forth in that instrument.

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the provisions of the laws of the State of Michigan.

24. **Captions.** Captions to paragraphs and sections of this Agreement have been included solely for the sake of convenient reference and are entirely without substantive effect.

25. **Successors And Assigns.** Purchaser shall not assign this Agreement without City's prior written consent. This Agreement shall be binding upon, and its benefits shall inure to, the parties hereto and their respective heirs, personal representatives, successors and assigns.

26. **Facsimile Signatures; Counterparts.** A facsimile of an original signature to this Agreement shall be deemed an original signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

27. **Offer Period.** This offer shall not be withdrawn by Purchaser for a period of ten (10) days from the date that a copy of this Agreement is signed by Purchaser and has been provided to City. The undersigned parties acknowledge and agree that this Agreement shall not be binding on either party until the Ypsilanti City Council has approved this Agreement pursuant to public meeting and corresponding resolution and this Agreement has been signed by the Mayor of City of Ypsilanti and any other parties required by City Council or other applicable ordinances, laws, and the Charter of City of Ypsilanti, and further approved by the Washtenaw County Parks and Recreation Commission and, if applicable, the Washtenaw County Board of Commissioners.

28. **No Brokers.** The undersigned parties acknowledge that no brokers are involved in connection with this transaction and that no commission shall be paid.

THIS AGREEMENT has been executed by the parties hereto on the date set forth above.

"PURCHASER"
Washtenaw County,
a Michigan Municipal Corporation
by the Washtenaw County Parks & Recreation
Commission

By: _____
Robert Tetens
Its: Director

Dated: _____

Approved by:

Curtis Hedger
Its: Corporation Counsel

STATE OF MICHIGAN
WASHTENAW COUNTY

Acknowledged before me in Washtenaw County, Michigan on _____, 2014 by Robert Tetens, Director of and on behalf of the Washtenaw County Parks and Recreation Commission and Washtenaw County.

_____, Notary Public
_____ County, Michigan
Acting in _____ County
Commission Expires: _____

"CITY"

**CITY OF YPSILANTI,
a Michigan municipal corporation**

By:_____

Its: Mayor

And

By:_____

Its: _____

Dated: _____ ("Effective Date")

STATE OF MICHIGAN
WASHTENAW COUNTY

Acknowledged before me in Washtenaw County, Michigan on _____, 2014 by
_____, Mayor of and on behalf of the City of Ypsilanti.

_____, Notary Public
_____ County, Michigan
Acting in _____ County
Commission Expires:_____

EXHIBITS

- A - Depiction of Property: 4.1 acre parcel
- B - Diagram of Overall Property: Water Street Redevelopment Project
- C-1 - Facility Description: Recreation Center
- C-2 - Offsite Infrastructure Improvements
- D - Preliminary Project Schedule

EXHIBIT A

DEPICTION OF 4.1 ACRE PARCEL (PER YELLOW LINE)

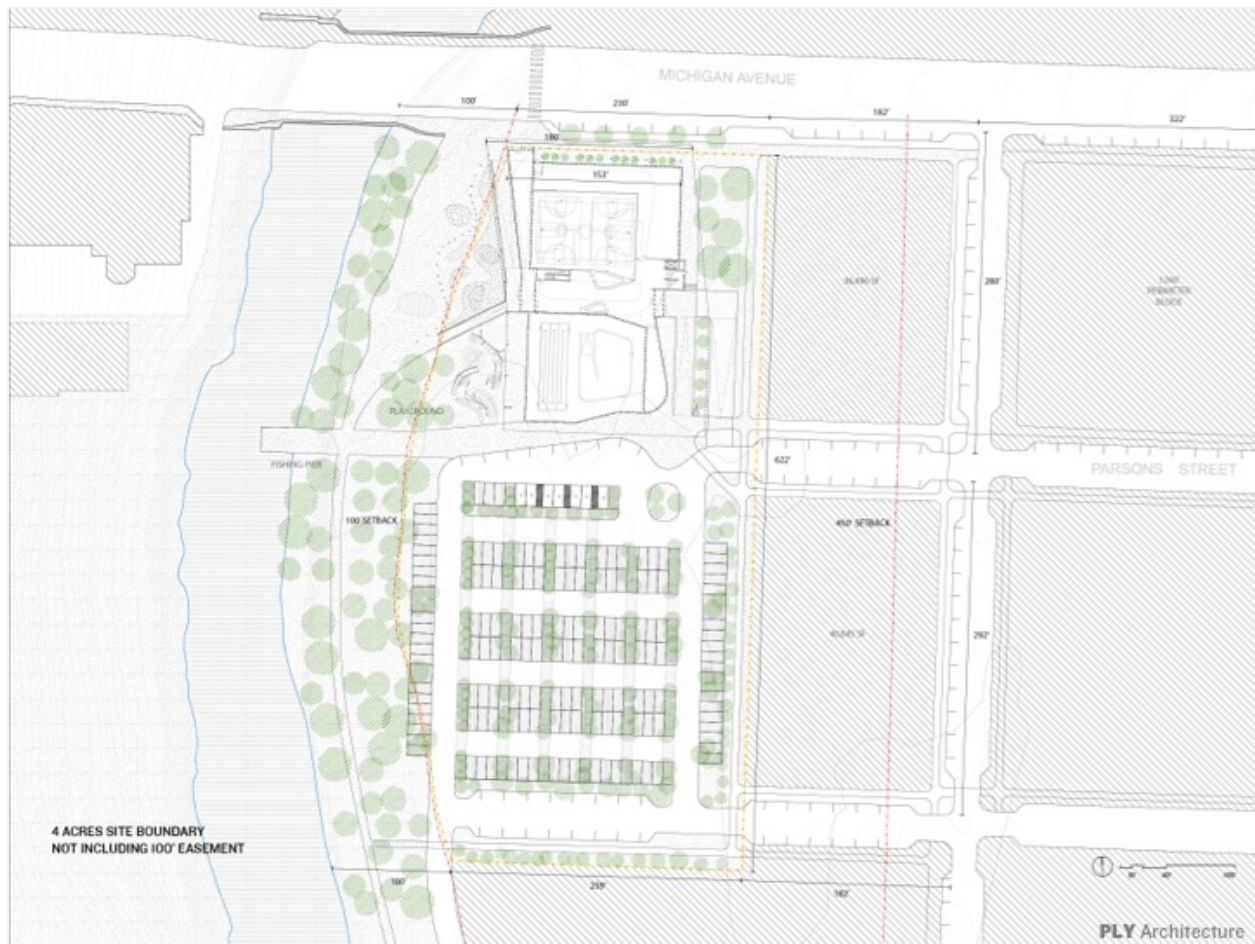


DIAGRAM OF THE OVERALL PROPERTY

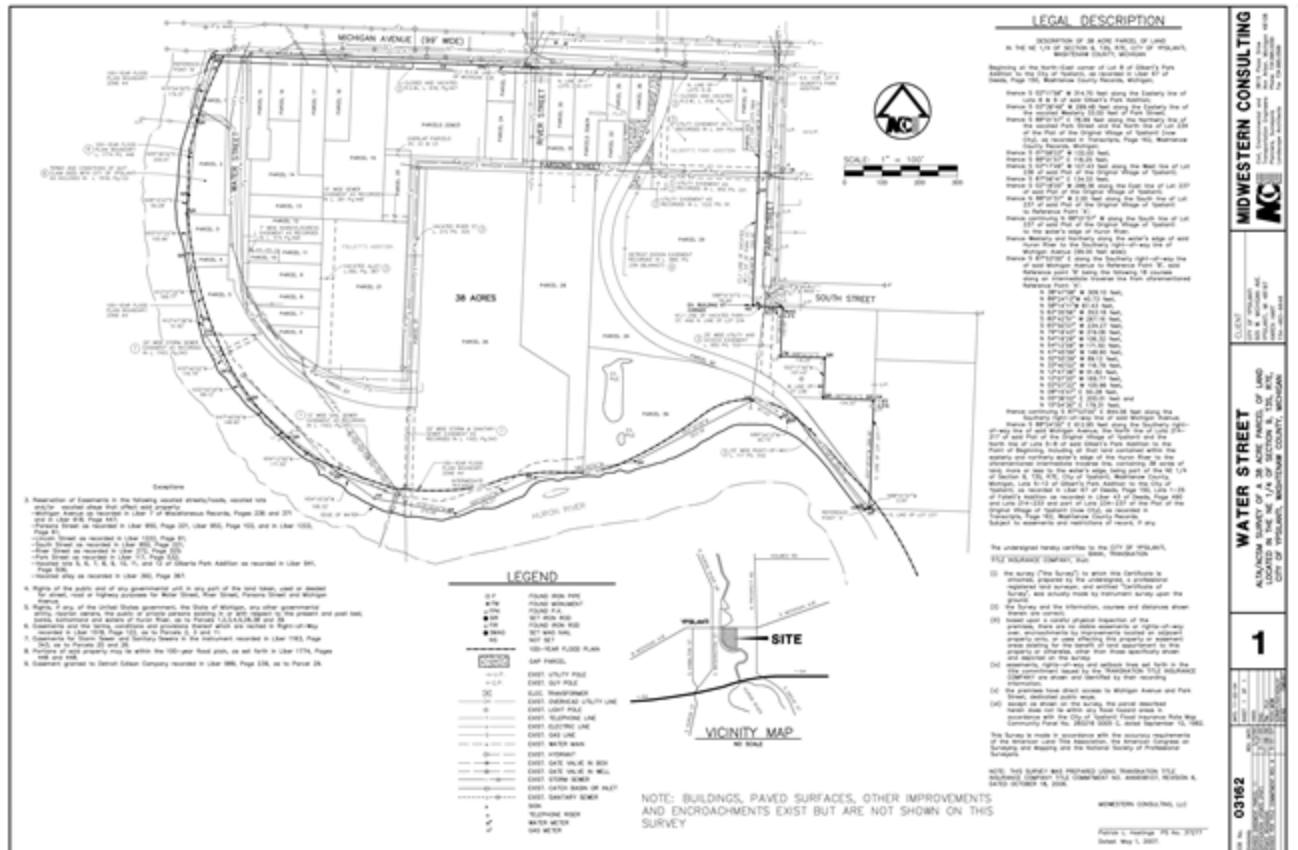


EXHIBIT C1

CONCPET PLAN FOR BUILDING AND SITE LAYOUT WITHIN 4.1 ACRE PARCEL (yellow line)



East Side Recreation Center (ERC)
2014 - 2016

ID	Task Name	Start	Finish	Duration	2014												2015												2016											
					Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
1	Execute Purchase Agreement	7/15/2014	7/15/2014	0d	◆																																			
2	Title Work and Survey	7/15/2014	8/28/2014	45d	■																																			
3	*Due Diligence and Governmental Approvals	7/15/2014	4/10/2015	270d	■																																			
4	Closing on Property	4/10/2015	5/9/2015	30d	■																																			
5	Issuance of RFP for Architectural Services	7/15/2014	9/12/2014	60d	■																																			
6	Design Development	7/15/2014	7/14/2015	365d	■																																			
7	Recording of Restrictive Covenant	5/9/2015	5/15/2015	7d	■																																			
8	Millage renewal	11/4/2014	11/4/2014	0d	◆																																			
9	Begin construction	11/1/2015	11/1/2015	0d	◆																																			

* If necessary, City shall grant up to 4 extension periods of 60 days each



Resolution No. 2014-171
July 14, 2014

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That the City Council Meeting be adjourned, on call, by the Mayor or two (2) members of Council.

OFFERED BY: _____

SUPPORTED BY: _____

YES: NO: ABSENT: VOTE: